

NPDES/VSMP Program and NOIRA Overview

What is the NPDES program?

- In 1972, Congress amended the Clean Water Act to prohibit the discharge of any pollutant to waters of the United States from a point source unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
- Although we often think of stormwater runoff as a “nonpoint source,” for purposes of the CWA, stormwater runoff from construction activities is considered to be a point source.

What is the Virginia Stormwater Management Program (VSMP)?

- Virginia's administration of the Clean Water Act's NPDES stormwater program.
- Administered by the Virginia Soil and Water Conservation Board.
- House Bill 1177 (2004) gave the state law authority for the VSMP program.
- EPA authorized the VSMP program to administer NPDES permits in January 2005.

What laws govern the VSMP?

- This is the administration by Virginia of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) program;
 - Federal (NPDES) regulations are found at 40 CFR (various parts, incl. 122 and 123).
- Governed by Virginia's Stormwater Management Act, §10.1-603.1 et seq.
 - State (VSMP) regulations are found at 4VAC50-60 et seq.

What does the VSMP construction stormwater program regulate?

- Land disturbing activities that:
 - Are one acre or greater in size (§10.1-603.4(6));
 - Are 2,500 square feet or greater in size in areas designated as subject to the Chesapeake Bay Area Designation and Management Regulations (9VAC10-20 et seq.) (§10.1-603.8(B)(4)); or
 - Are a part of a larger plan of common development or sale that is one acre or greater (§10.1-603.8(B)(4)).
- All regulated land disturbing activities must have permit coverage, either through an individual permit or under the General Permit.

What is a NPDES/VSMP permit?

- A permit is a license:
 - Issued by the government;
 - Granting permission to do something that would be illegal in the absence of the permit.
- There is no right to a permit and it is revocable for cause.
- A NPDES (VSMP) permit is a license to discharge.
- A permit is developed based on the underlying governing law and regulations.

What are the types of NPDES/VSMP permits?

Individual permits:

- Cover a single permittee;
- Developed with conditions specific to that permittee's discharge.

General permits:

- Cover a category of permittees with similar discharges;
- Developed with conditions that are generally applicable to those discharges.

What is the VSMP General Permit for Discharges of Stormwater from Construction Activities?

- A permit regulation of the Virginia Soil and Water Conservation Board.
- The permit under which regulated land disturbing activities are covered.
- It is a Clean Water Act NPDES permit.
- It is governed by the underlying VSMP regulations.

What may be considered in this regulatory action to amend the General Permit?

- Amendments to Parts I and XIV of the VSMP regulations.
- Like an individual permit, it is still governed by the remainder of the VSMP regulations.
- It cannot change the basic “rules” contained in VSMP regulations, which must be accomplished by a separate regulatory action.
- It can implement those basic rules, and make them effective against permittees.

What may be considered in this regulatory action to amend the General Permit?

- NOIRA (Notice of Intended Regulatory Action) also describes what may be considered in this action.
- NOIRA drafted broadly to allow many issues to be considered.

NOIRA Review

- The NOIRA is an initial step in the regulatory process.
- Placed on the Regulatory Town Hall on March 24.
- Describes the purpose, legal basis, and the scope of the regulatory action.

NOIRA: Purpose

To amend the General Permit for
Discharges of Stormwater from
Construction Activities

NOIRA: Legal Authority

Federal Clean Water Act
(33 U.S.C. § 1251 et seq.)

Virginia Stormwater Management Act
(Va. Code § 10.1-603.1 et seq.)

NOIRA: Scope

- Issues permitted (but not required) to be considered include (but are not limited to):
 - Requirements for compliance with Parts II (technical criteria), III (local program criteria), IV (state projects), VI (general requirements), VII (permit applications), and VIII (permit conditions).
 - Requirements for consistency with other laws and regulations, including Erosion and Sediment Control.

NOIRA: Scope (cont'd)

- Requirements for impaired waters and waters with an EPA-approved TMDL.
- Timing of permit coverage and registration statement requirements.
- Procedures for permit termination and transfers of permit coverage.
- Natural resource protection consideration.
- Monitoring processes.
- Amendments to definitions contained in Part I
- Amendments to forms.
- Amendments to SWPPP requirements.